

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

74-1388

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Page

in the
United States Court of Appeals
for the **Second Circuit**

CASE NO. 74-1388

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.

RAUL ORTEGA-ALVAREZ, a/k/a
RAUL ORTEGA, et al,
Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of New York

SUPPLEMENTAL APPENDIX FOR APPELLANT



MAX B. KOGEN, P.A.
Attorney for appellant ORTEGA
1040 City National Bank Building
25 West Flagler Street
Miami, Florida 33130
(305) 377-4963

PAGINATION AS IN ORIGINAL COPY

United States District Court FOR THE

SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

v

RAUL SERAFIN ORTEGA-ALVAREZ and
CARLOS A. SARMIENTO-HERNANDEZ

Magistrate's Docket No. 1

Case No. 71-155-PP

COMPLAINT for VIOLATION of

U.S.C. Title 21

Section 174

BEFORE PETER R. PALERMO

Name of Magistrate

Miami, Florida

Address of Magistrate

The undersigned complainant being duly sworn states:

That on or about January 20, 1970, at Miami, Florida,

in the

Southern District of Florida

(1) RAUL SERAFIN ORTEGA-ALVAREZ
and CARLOS A. SARMIENTO-HERNANDEZ
did⁽²⁾ knowingly conspire to conceal and facilitate the transportation of a narcotic
drug, to-wit: heroin, knowing the same to have been imported into the United
States contrary to law.

And the complainant states that this complaint is based on

See attached affidavit

And the complainant further states that he believes that

Thomas Angioletti
Frank Tumillo
Roger Caraff

are material witnesses in relation to this charge.

Wallace Mignault
Wallace Mignault
Special Agent, BNDD

Signature of Complainant.

Sworn to before me, and subscribed in my presence, March 30, 1971 Official Title.

Peter R. Palermo
PETER R. PALERMO
MICHAEL J. OSMAN

United States Magistrate.

(1) Exact name of accused.

(2) Exact statement of the essential facts constituting the offense charged.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Magistrate's Docket No. 1

Case No. 71055-PP

UNITED STATES OF AMERICA :

v. :

AFFIDAVIT

RAUL SERAFIN ORTEGA-ALVAREZ and :
CARLOS A. SARMIENTO-HERNANDEZ :

I, WALLACE MIGNAULT, Special Agent, Bureau of Narcotics and Dangerous Drugs, do depose and say in support of Complaint and Arrest Warrant for Raul Serafin Ortega-Alvarez and Carlos A. Sarmiento-Hernandez:

1. On March 24, 1971, I received information from the Bureau of Narcotics and Dangerous Drugs, New York Office, that Miguel Rodriguez, Carlos Tapanes and Joaquin Prada were convicted of sale and conspiracy regarding 995.5 grams of heroin hydrochloride sold to undercover agents of the Bureau of Narcotics and Dangerous Drugs on March 13, 1970, for the amount of \$25,000, at 165th Street and Amsterdam Avenue, New York, New York.

2. Records from the Bureau of Narcotics and Dangerous Drugs, New York, New York, indicated that other persons were also involved in the sale of 995.5 grams of heroin hydrochloride on March 13, 1970, whose identities were unknown to the Bureau of Narcotics and Dangerous Drugs.

3. On March 25, 1971, I received information from a confidential source of information (SG-1-1-0012) who has proved reliable on at least four previous occasions. I was advised that on or about January 20, 1970, SG-1-1-0012 personally met with Raul Serafin Ortega-Alvarez and Ramiro Gonzales-Infante at Tenth Avenue and West Flagler Street, Miami, Florida, to discuss the delivery of heroin to New York, and later that same day Gonzales and SG-1-1-0012 met with Carlos A. Sarmiento-Hernandez at 1066 W. W. First Street, Miami, Florida, to further discuss the delivery of heroin to New York. Carlos A. Sarmiento-Hernandez furnished \$150.00

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for SG-1-1-0012 to fly to New York. Later that same day SG-1-1-0012 flew to New York and subsequently met with Raul Serafin Ortega-Alvarez, Ramiro Gonzales-Infante, Miguel Rodriguez, Carlos Tapanes and Joaquin Prada.

4. I was advised by SG-1-1-0012 that on March 13, 1970, he, along with Raul Serafin Ortega-Alvarez, Ramiro Gonzales-Infante, Miguel Rodriguez, Carlos Tapanes and Joaquin Prada, delivered 995.5 grams of heroin hydrochloride to Bureau of Narcotics and Dangerous Drugs undercover agents Thomas Angioletti and Frank Tumillo at 165th Street and Amsterdam Avenue, New York, New York.

Further affiant saith not.

Wallace E. Mignault
Wallace Mignault
Special Agent
Bureau of Narcotics and Dangerous Drugs

Sworn to before me and subscribed in my presence this 31
day of March, 1971.

Notary Public

[Signature]

HFK:rf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

71-1556-1

21 USC, Sections 173 & 174
M/S NLT 5 NHT 20 - \$20,000

UNITED STATES OF AMERICA :

v. :

RAUL SERAFIN ORTEGA-ALVAREZ :

INDICTMENT



The Grand Jury charges:

COUNT I

1. From on or about January 20, 1970, continuing to on or about March 13, 1970, beginning in Miami, Dade County, in the Southern District of Florida, and culminating in New York, New York, the defendant,

RAUL SERAFIN ORTEGA-ALVAREZ,

together with Ramiro Gonzalez, Miguel Rodriguez, Joaquin Prada, Carlos Banos-Layo and Carlos A. Sarmiento, named in this indictment as co-conspirators but not as defendants, and various other persons presently unknown to the Grand Jury, did wilfully and knowingly combine, conspire, confederate and agree with each other to violate Title 21, United States Code, Sections 173 and 174.

2. It was a part of said conspiracy that the defendant would fraudulently and knowingly import and bring large amounts of narcotic drugs, to-wit: heroin, into the United States contrary to law.

3. It was further a part of the conspiracy that the defendant would wilfully and knowingly receive, conceal, buy, sell, and facilitate the transportation, concealment and sale of narcotic drugs, to-wit: heroin, after said narcotic drugs had been imported into the United States contrary to law.

4. It was further a part of the conspiracy that the defendant would conceal the existence of the conspiracy, and would take steps designed to prevent the disclosure of his activities.

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SI-122

OVERT ACTS

1. On or about January 20, 1970, Carlos Banos-Layo met with Ramiro Gonzalez and Raul Serafin Ortega-Alvarez on Flagler Street and Tenth Avenue, Miami, Florida.
2. On or about January 20, 1970, Carlos Banos-Layo met with Ramiro Gonzalez and Carlos A. Sarmiento at 1066 N. W. First Street, Miami, Florida.
3. On or about January 20, 1970, Carlos Banos-Layo flew to New York from Miami, Florida.
4. On or about March 4, 1970, Miguel Rodriguez, Ramiro Gonzalez, Carlos Banos-Layo, Raul Serafin Ortega-Alvarez and Carlos Tapanes met at 432 Union Avenue, Westbury, Long Island, New York.
5. On or about March 13, 1970, Raul Serafin Ortega-Alvarez, Carlos Banos-Layo, Ramiro Gonzalez, Carlos Tapanes and Joaquin Prada transferred one kilo of heroin to Special Agents Thomas Angioletti and Frank Tumillo at 165th Street and Amsterdam Avenue, New York, New York.

All in violation of Title 21, United States Code, Sections 173 and 174.

A TRUE BILL

Martin H. Lloyd
FOREMAN

ROBERT W. RUST
UNITED STATES ATTORNEY

By Charles D. Fama
Harold P. Keefe
Assistant United States Attorney

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WFK:er

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 71-²⁸¹~~445~~-CR-JE
21 USC, Sections 173 & 174
M/S NLT 2 NMT 10 - \$20,000

UNITED STATES OF AMERICA :

v. :

RAUL SERAFIN ORTEGA-ALVAREZ :

INFORMATION

FILED
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI, FLA.
JUN 14 12 25 PM '71

The United States Attorney charges:

COUNT 1

1. From on or about January 20, 1970, continuing to on
March 13, 1970, beginning in Miami, Dade County, in the Southern
District of Florida, and culminating in New York, New York, the defendant,

RAUL SERAFIN ORTEGA-ALVAREZ,

did purchase, sell dispense or distribute a narcotic drug that is approximately
1,000 grams of heroin not in the original stamped package and not from the
original stamped package; in violation of Title 26 USC Section 4704(a) and
7237.

ROBERT W. RUST
UNITED STATES ATTORNEY

By: *Harold F. Keeffe*
HAROLD F. KEEFE
ASSISTANT U. S. ATTORNEY

*Filed before me
this May 24, 1971
C. L. [Signature]*

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Waiver of Indictment

COPY RECORDED

Co. Form No. 18

United States District Court

FOR THE

SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

v.

RAUL SERAFIN CRTEGA-ALVAREZ

No. 71-281-C

FILED
MAY 24 12 31 PM '71
JOSEPH L. BOGART
CLERK, U.S. DIST. CT.
SOUTHERN DIST. OF FLA.
MIAMI, FLA.

the above named defendant, who is accused of

PURCHASE, SELL OR DISTRIBUTE A NARCOTIC DRUG, THAT IS
APPROXIMATELY 1000 GRAMS OF HEROIN NET IN THE ORIGINAL STAMPED
PACKAGE AND NET FROM THE ORIGINAL STAMPED PACKAGE; IN VIOLATION
OF TITLE 26, USC, SECTION 4754(a) AND 7237.

being advised of the nature of the charge and of his rights, hereby waives in open court prosecution
by indictment and consents that the proceeding may be by information instead of by indictment.

Date MAY 24 1971

Raul Ortega Defendant.
James A. [illegible] Witness.
Marion B. [illegible] Counsel for Defendant.

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JUDGMENT AND COMMITMENT (Rev. 12-66)

Cr. Form No. 25

United States District Court
FOR THE

SOUTHERN DISTRICT OF FLORIDA

United States of America

v.

RAUL SERAFIN ORTEGA-ALVAREZ

No. 71-231-Cr-EC

4

FILED
MAY 13 1971
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI

On this 24th day of May, 1971, came the attorney for the government and the defendant appeared in person and by counsel, Max R. Kogen, Esq.

It is adjudged that the defendant upon his plea of: Guilty and the Court being satisfied there is a factual basis for the plea,

has been convicted of the offense of the purchase, sale and distribution of a narcotic drug not in the original stamped package or from the original stamped package, in violation of Title 26, United States Code, Section 4704(a) and Section 7237,

Certified to be a true and correct copy of the original.

[Signature]
May 25, 1971

as charged in the One Count Information

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE(5) YEARS pursuant to the provisions of Title 18 USC, Chapter 311, Section 4208(a)(2), it being further

ORDERED that the Defendant shall become eligible for parole at such time as the Board of Parole may determine, and it is further

ORDERED that execution of sentence of confinement be deferred until May 25, 1971, at which time defendant shall surrender himself to the United States Marshall at Miami, Florida.

It is adjudged that:

RECEIVED
MAY 26 12 40 PM '71
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI, FLORIDA

It is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LETT C. G. OAKS, United States District Judge.

The Court recommends commitment to:

Clerk.

Insert "by (name of counsel, counsel) or "without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. Insert "in criminal number" if required. Enter (1) sentence or sentences, specifying courts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fines and costs, or until he is otherwise discharged as provided by law. Enter any order with respect to suspension and probation. For use of Court wishing to recommend a particular institution.

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RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on 5-24-71 to Miami City Jail, Miami, Fla.

Defendant noted appeal on

Defendant released on

Defendant elected, on

not to commence service of the sentence.

Defendant's appeal determined on

Defendant delivered on June 10, 1971

to U.S. Penitentiary

at Atlanta, Ga.

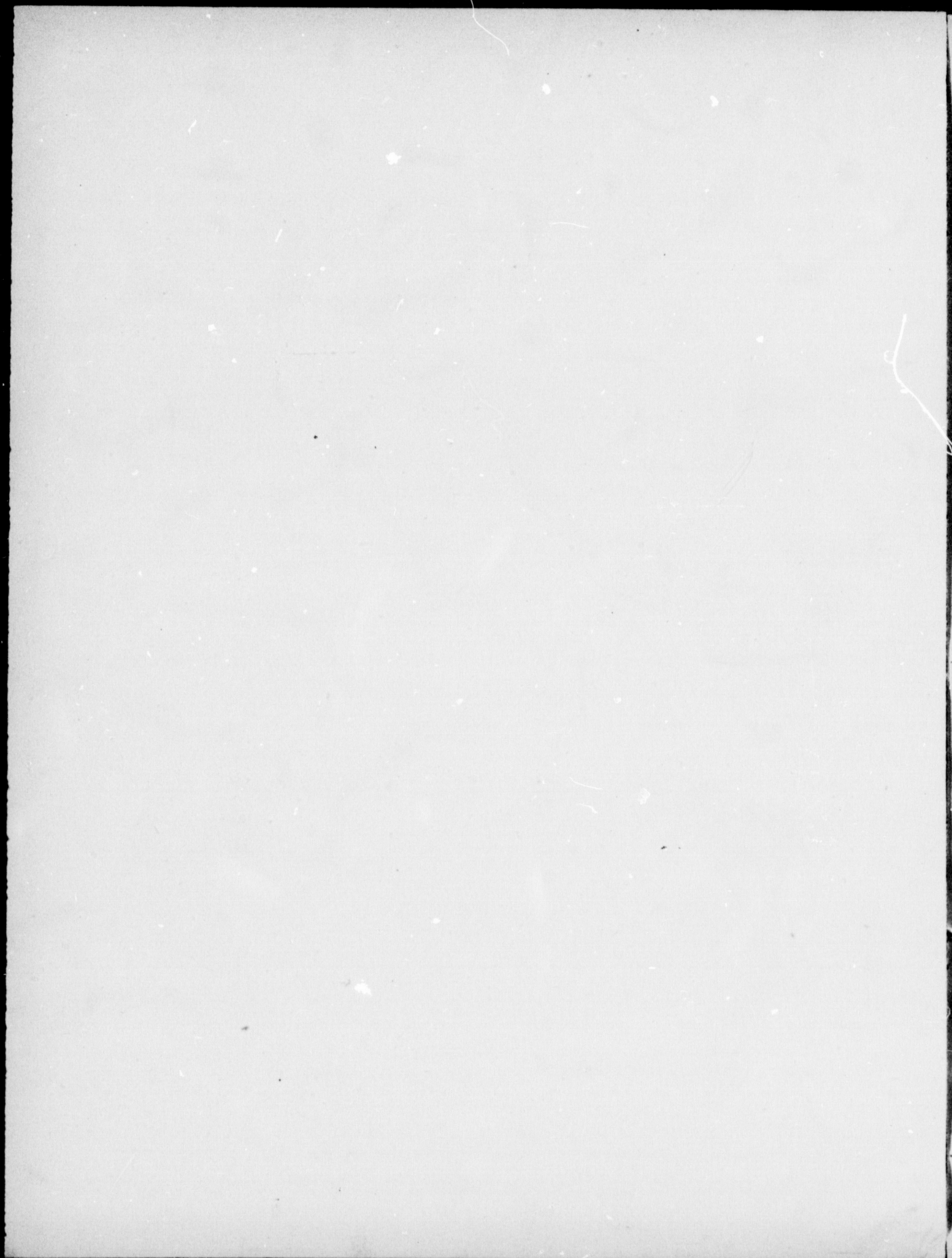
, the institution designated by the
Attorney General, with a certified copy of the within Judgment and Commitment.

Defendant committed 5-24-71
following arrest; was not released
on bail.

LOREN WIDEMAN

United States Marshal

By: William A. Hunter
William A. Hunter, Deputy



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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

NO: 74-1388

RAUL ORTEGA-ALVAREZ a/k/a :
RAUL ORTEGA,

Appellant, :

vs. :

AFFIDAVIT

UNITED STATES OF AMERICA, :

Appellee. :

STATE OF FLORIDA }

COUNTY OF DADE }

BEFORE ME, the undersigned Notary Public,
personally appeared MAX B. KOGEN, ESQUIRE, who being by me
first duly sworn, states on his oath as follows:

1. That the printed Amended Appendix in the
above-styled cause, was this 29th day of July, 1974, mailed
to the Office of the Clerk, United States Court of Appeals,
Second Circuit, United States Courthouse, Foley Square, New
York, New York, SHIRAH NEIMAN, Assistant United States Attorney,
United States Courthouse, Foley Square, New York, New York
and to HARVEY J. MICHELMAN, ESQ., 250 West 57th Street, New
York, New York.

FURTHER AFFIANT SAYETH NOT

Max B. Kogen P.A.
MAX B. KOGEN
Attorney for Appellant

SWORN TO and SUBSCRIBED

before me on this 29th

day of July, 1974.

Christine Sarman
NOTARY PUBLIC STATE OF FLORIDA

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA at LARGE
MY COMMISSION EXPIRES MAY 20, 1977
BOUNDED THRU NATHAN'S BONDING AGENCY